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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

**PAUL ORSHAN, CHRISTOPHER
ENDARA, and DAVID HENDERSON,
individually, and on behalf of all others
similarly situated,**

Plaintiffs,

v.

APPLE INC.,

Defendant.

Case No. 5:14-cv-5659 EJD

**FIRST AMENDED CLASS ACTION
COMPLAINT:**

**(1) CALIFORNIA'S UNFAIR
COMPETITION LAW (§ 17200);
(2) CALIFORNIA'S FALSE
ADVERTISING LAW (§ 17500 *ET SEQ.*);
(3) CALIFORNIA'S CONSUMER LEGAL
REMEDIES ACT (§ 1750 *ET SEQ.*)**

JURY TRIAL DEMANDED

1 Plaintiffs Paul Orshan (“Orshan”), Christopher Endara (“Endara”), and David Henderson
2 (“Henderson”), individually and on behalf of all others similarly situated (or collectively
3 “Plaintiffs”), file this class action against Defendant Apple Inc. (“Apple” or “Defendant”).
4 Plaintiffs allege the following upon personal knowledge as to their actions and upon information
5 and belief based upon the investigation of their attorneys as to all other facts alleged in the
6 Complaint:

7 INTRODUCTION

8 1. This case challenges storage capacity misrepresentations and omissions relating to
9 use of Apple’s iOS 8 operating system. As set forth in greater detail below, iOS 8 uses an
10 unexpectedly large percentage of the storage capacity on 8 GB and 16 GB iPhones, iPads and
11 iPods (the “Devices”).

12 2. Defendant fails to disclose to consumers that as much as 23.1% of the advertised
13 storage capacity of the Devices will be consumed by iOS 8 and unavailable for consumers when
14 consumers purchase Devices that have iOS 8 installed. Apple also forces consumers to retain
15 applications that many consumers do not want, but are unable to delete. Reasonable consumers,
16 such as Plaintiffs, do not expect this marked discrepancy between the advertised level of capacity
17 and the available capacity of the Devices, as the operating system and other storage space
18 unavailable to consumers occupies an extraordinary percentage of their Devices’ limited storage
19 capacity.

20 3. To compound the harm to consumers, after Defendant provides materially less
21 than the advertised capacity on the Devices, Defendant aggressively markets a monthly-fee-
22 based storage system called iCloud. Using these sharp business tactics, Defendant gives less
23 storage capacity than advertised, only to later offer to sell that capacity in a desperate moment,
24 e.g., when a consumer is trying to record or take photos at a child or grandchild’s recital,
25 basketball game or wedding. To put this in context, each gigabyte of storage Apple shortchanges
26 its customers amounts to approximately 400-500 high resolution photographs.

JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332(d). The matter in controversy exceeds \$5,000,000 exclusive of interests and costs, and this matter is a class action in which certain class members are citizens of States other than Defendant's state of citizenship.

5. Venue is proper in this Court because Defendant resides in this District, and a substantial part of the events alleged in this Complaint giving rise to Plaintiff's claims, including the dissemination of the false and misleading advertising alleged herein, occurred in and were directed from this District.

THE PARTIES

6. Plaintiff Paul Orshan is a resident of Miami, Florida. Plaintiff Christopher Endara is a resident of Miami, Florida. Plaintiff David Henderson is a resident of Arlington, Virginia.

7. Defendant Apple Inc. ("Apple") is a corporation organized under the laws of the State of California, and has its principal place of business in Cupertino, California.

BACKGROUND

8. Storage capacity in computing and telecommunications is typically measured in a digital unit called a byte. A kilobyte, or "KB," is typically defined as one thousand, or 10^3 , bytes. A megabyte, or "MB," is typically defined as one million, or 10^6 , bytes. A gigabyte, or "GB," is typically defined as one billion, or 10^9 , bytes. The foregoing definitions of KB, MB, and GB are "decimal" definitions of the respective units, as recognized by the International System of Quantities ("ISQ"). The ISQ is a measurement system jointly promulgated by the International Organization for Standardization ("ISO") and the International Electrotechnical Commission ("IEC").

9. An alternative to "decimal" units of storage are "binary"-based units. Instead of being founded upon a base 10 system, it is predicated on a base 2 system. In the binary system a kibibyte, or KiB, is 1024, or 2^{10} bytes. A mebibyte, or MiB is 1,048,576, or 2^{20} bytes. A gibibyte, or GiB, is 1,073,741,824, or 2^{30} , bytes. Sometimes, the decimal terms, such as megabyte or gigabyte, are used to describe quantities of bytes that would be more accurately

1 represented with binary units – for example, the term gigabyte is sometimes used, in practice, to
2 represent either 1,000,000,000 or 1,073,742,824 bytes. Some devices containing storage
3 capacity (including the Devices at issue in this action) will, for example, graphically represent to
4 the user their total, and available, capacities using the term “GB,” but use that term to denote
5 1,073,742,824 bytes.

6 10. Defendant advertises the Devices using the decimal definition gigabyte, or GB.
7 Therefore the capacity of 8 GB Devices is advertised by Defendant as 8 billion bytes. The
8 storage capacity of 16 GB devices is advertised as 16 billion bytes.

9 11. In reality, nothing close to the advertised capacity of the Devices is available to
10 end users. Indeed, the discrepancy between advertised and available capacity is substantial and
11 beyond any possible reasonable expectation. For the Devices, the shortfall ranges from 18.1-
12 23.1%.

13 12. As noted above, although Defendant advertised based upon the decimal-based
14 system of measurement, upon information and belief, the Devices display available capacity
15 based upon the binary definitions. This is confusing even to the technically savvy because it
16 prevents consumers from making the proverbial “apples to apples” comparison. Exacerbating
17 this confusion is the fact that rather than using the GiB representation, as suggested by the ISQ,
18 the graphic interface used on the Devices uses the abbreviation GB, even though it is apparently
19 referring to gibibytes, and not gigabytes.

20 13. Once one converts the available capacity of the Devices from gibibytes back to
21 gigabytes—a calculation few consumers are likely to make or understand—the capacity
22 available is materially less than what is represented in Defendant’s advertising. Further, it
23 appears that Defendant segregates the storage space of the Devices into a media partition and a
24 root partition. The media partition is the portion of the Device’s storage that is available to the
25 consumer. Control of the root partition rests exclusively with Apple and consumers have no
26 ability to reduce the portion of the storage apportioned to Apple. It is important to note that the
27 root partition is larger than it needs to be and viable storage capacity on the root partition side
28 can remain unused even as the media partition becomes full and a consumer is instructed to

1 purchase iCloud space from Apple. Further, several users have reported that, if a consumer
 2 “jailbreaks”¹ a Device, the root partition can be reduced in size to accommodate a greater storage
 3 allocation to the consumer.

4 **FACTUAL ALLEGATIONS**

5 14. Apple is in the business of, *inter alia*, manufacturing and marketing its line of
 6 “iPhone” cellular telephones, with the first model released on or about released on June 29, 2007.
 7 Apple currently markets and sells the iPhone 6 and 6+ introduced on or about September 9,
 8 2014. Predecessor models include the iPhone 5s and 5c introduced on or about September 10,
 9 2013, and the iPhone 4s introduced on or about October 10, 2011. Apple also manufactures and
 10 markets a line of “iPad” tablet devices, first introduced on April 3, 2010. Apple also
 11 manufactures and markets a line of “iPod” audio players, first introduced on October 23, 2001.
 12 As noted above, 8 GB and 16 GB versions of the iPhones, iPods and iPads are collectively
 13 referred to herein as “the Devices.”

14 15. Apple explicitly represents in its website, advertisements, product packaging, and
 15 other promotional materials, that the iPhone 6 and 6+ are available with a storage capacity of 16
 16 GB. Apple made similar representations with respect to earlier models of the iPhone, albeit with
 17 respect to lesser storage capacities of 8 GB, as well. Apple also makes, and has made at all times
 18 during the relevant time period, representations concerning the storage capacities of its 8 GB and
 19 16 GB iPads and iPods.

20 16. In February, 2014, Plaintiff Orshan purchased two iPhone 5s’ represented by
 21 Apple to have 16 gigabytes (“16GB”) of purported storage capacity from the AT&T Store
 22 located in Coral Gables, Florida. Orshan purchased the devices on a payment plan of \$32.50 per
 23 month. Orshan purchased devices primarily for personal, family or household use. The iPhones
 24 were purchased with iOS 7 and recently upgraded to iOS 8.

25 17. In November, 2012 Plaintiff Orshan also purchased two iPads represented by
 26 Apple to have 16 gigabytes (“16GB”) of purported storage capacity at the Apple Store in the

27 ¹ The term “jailbreak” is used to describe the modification of a Device to remove some, or all,
 28 controls or limitations set by the manufacturer, and may include substitution of the operating
 system. Jailbreaking a Device typically voids the manufacturer’s warranty, and is an option
 pursued only by the most technically sophisticated and/or adventurous users.

1 Dadeland Mall. Orshan paid \$639.86 for the devices. The iPads were subsequently upgraded to
2 iOS 8.

3 18. Plaintiff Orshan purchased his iPhones and iPads in reliance on Defendant's
4 claims, on its website, advertisements, product packaging, and other promotional materials, that
5 the devices came equipped with 16 GB of storage space. Plaintiff Orshan viewed various
6 materials, including Apple's website before purchasing his iPhones and iPads, and packaging
7 materials in the store at the time of making the purchases, which specifically stated that the
8 Devices were available with 8 GB or 16 GB of storage capacity. Plaintiff Orshan was willing to
9 – and did in fact – pay more to acquire devices with 16GB of storage capacity (rather than the
10 less expensive 8GB of storage capacity) because he wanted the greater capacity to store his
11 personal data. In reliance on the fact that Apple specifically represented that the devices had 16
12 GB of storage capacity, Plaintiff Orshan expected that capacity would be available for his
13 personal use. Absent that, it would not have been of the same monetary value to him. Plaintiff
14 upgraded to iOS 8 with the belief that the upgrade would not substantially inhibit his available
15 storage capacity. Defendant did not adequately disclose in conjunction with upgrades to iOS 8
16 the additional and substantial storage capacity that would be consumed by the upgrade. Had
17 Plaintiff Orshan known that by upgrading to iOS 8 he would substantially inhibit – and in fact
18 decrease – his storage capacity, he would not have upgraded to iOS 8.

19 19. In December, 2014, Plaintiff Endara purchased an iPhone 6 represented by Apple
20 to have 16 gigabytes ("16GB") of purported storage capacity from the AT&T store located in
21 Miami, Florida. Endara purchased the device on a payment plan of approximately \$27 per
22 month. Endara purchased the device primarily for personal use. The iPhone was purchased with
23 iOS8 pre-installed.

24 20. Plaintiff Endara purchased his iPhone in reliance on Defendant's claims, on its
25 website, advertisements, product packaging, and other promotional materials, that his iPhone 6
26 came equipped with 16 GB of storage space. Plaintiff Endara viewed various materials,
27 including Apple's website before purchasing his iPhone and packaging materials in the store at
28 the time of making the purchase, which stated that the Device possessed 16 GB of storage

1 capacity. In reliance on the fact that Apple specifically represented that the device had 16 GB of
2 storage capacity, Plaintiff Endara expected that capacity would be available for his personal use.
3 Absent that, it would not have been of the same monetary value to him. Had he known that in
4 reality, the operating system and other pre-installed software consumes a substantial portion of
5 the represented storage capacity, Endara would not have purchased the 16GB of storage capacity
6 or would not have been willing to pay the same price for it.

7 21. On April 1, 2012, Plaintiff Henderson purchased an iPad2 represented by Apple
8 to have 16 gigabytes (“16GB”) of purported storage capacity from the Apple Store located in
9 Clarendon, Virginia. Henderson purchased device primarily for personal, family or household
10 use. Henderson paid \$522.90 for the device after tax and a \$99 payment for AppleCare support.
11 The iPad was purchased with a predecessor operating system to iOS 8.

12 22. Once Henderson upgraded to iOS 8, his iPad, which had previously performed
13 almost flawlessly for him, slowed to a snail’s pace and was no longer useful for any purpose
14 other than reading a book. Henderson took the iPad to the Apple Genius Bar in the Apple Store
15 in Clarendon, Virginia, and was told that they had received many complaints about iPads
16 instantly becoming useless and that iPads with more memory seemed to fair better with the iOS
17 8. Henderson made multiple efforts to resolve the crash and speed issues with his iPad in store,
18 through AppleCare and even with an individual in Corporate Executive Relations at Apple’s
19 executive offices. Ultimately, he was passed to an AppleCare iOS Senior Specialist who
20 recommended that he jailbreak his device—an action that would void his warranty. Because his
21 iPad would not perform properly, Henderson was forced to purchase a new iPad mini
22 represented by Apple to have 32 GB of storage capacity.

23 23. Plaintiff Henderson purchased his iPad in reliance on Defendant's claims, on its
24 website, advertisements, product packaging, and other promotional materials, that the device
25 came equipped with 16 GB of storage space. Plaintiff Henderson viewed various materials,
26 including Apple’s website before purchasing his iPad, and packaging materials in the store at the
27 time of making the purchase, which specifically stated that the Device were available with 8 GB
28 or 16 GB of storage capacity. Plaintiff Henderson was willing to – and did in fact – pay more to

1 acquire devices with 16GB of storage capacity (rather than the less expensive 8GB of storage
2 capacity) because he wanted the greater capacity to store his personal data. In reliance on the
3 fact that Apple specifically represented that the devices had 16 GB of storage capacity, Plaintiff
4 Henderson expected that capacity would be available for his personal use. Absent that, it would
5 not have been of the same monetary value to him. Plaintiff upgraded to iOS 8 with the belief
6 that the upgrade would not substantially inhibit his available storage capacity. Defendant did not
7 adequately disclose in conjunction with upgrades to iOS 8 the additional and substantial storage
8 capacity that would be consumed by the upgrade. Had Plaintiff Orshan known that by upgrading
9 to iOS 8 he would substantially inhibit – and in fact decrease – his storage capacity, he would not
10 have upgraded to iOS 8.

11 24. Neither Plaintiff Orshan, Plaintiff Endara, Plaintiff Henderson, nor any reasonable
12 consumer, expected (or could have reasonably expected) that a shortfall ranging between 18.1 –
13 23.1 % exists between the advertised and available capacity of the Devices they purchased.

14 25. Storage capacity matters to reasonable consumers (including Plaintiffs and
15 putative Class members) precisely because of how it translates into their ability to store personal
16 information after purchase. Storage capacity constitutes a substantial consideration that weighs
17 into reasonable consumers' decision making processes. Consumers purchase Devices with
18 greater storage capacity with the expectation that they will be able to storage a greater amount of
19 personal information on those Devices and delay having to purchase a replacement in the future.
20 Indeed, this is why Apple makes representations regarding the storage capacity of its products
21 and boasts to consumers that its Devices have 16GB of storage capacity. To a consumer, the fact
22 that a device has a particular storage capacity matters mostly because it impacts their ability to
23 make use of that capacity. The fact that a device has a storage capacity is not valuable to a
24 reasonable consumer if that consumer cannot actually make use of that capacity.

25 26. Apple should have disclosed the actual storage capacity available to users for its
26 various Devices and that upgrading to iOS 8 would result in a substantial decrease in available
27 storage capacity. Had Plaintiffs known that the operating system and other pre-installed software
28

consumes a substantial portion of the storage capacity of the Devices, they would have reconsidered their decisions to purchase Devices, or would have paid less.

27. Defendant employs false, deceptive and misleading practices in connection with marketing, selling; and distributing the Devices. For example, in its advertising, marketing, and promotional materials, including Apple's Internet website, product packaging, and product displays, Defendant presently misrepresents the iPhone 6 as having 16 GB of storage capacity.

28. Defendant knows, but conceals and fails to disclose in its advertising, marketing or promotional materials, that the operating system and other pre-installed software consumes a substantial portion of the represented storage capacity of each of the Devices. The represented capacity, is not, therefore, storage space that the consumer can actually use to store files after purchase. Defendant also fails to discuss that consumers will be forced to retain certain applications, which consume storage capacity, even if the consumer wishes to delete the application. Thus, for a consumer who purchases a "16 GB" iPhone, iPad, or iPod with iOS 8 pre-installed, or who upgrades to iOS 8, as much as 23.1% of the represented storage capacity is inaccessible and unusable.

29. The following table depicts the discrepancy between represented storage capacity, and storage capacity actually available to purchasers, on certain iPhones and iPads (with iOS 8 installed) that were recently examined by Plaintiffs' counsel:

Device	Represented Capacity	Capacity Available to User		Capacity Unavailable to User	
	(GB)	(GiB)	(GB)	(GB)	(%)
iPhone 6+	16	11.8	12.7	3.3	20.6%
iPhone 6	16	12.1	13.0	3.0	18.8%
iPhone 5s	16	12.2	13.1	2.9	18.1%
iPad Air	16	11.7	12.6	3.4	21.3%
iPad	16	11.7	12.6	3.4	21.3%
iPod	16	11.5	12.3	3.7	23.1%

30. The foregoing actual capacities are further confirmed by reports from several purchasers and bloggers reported on various websites. For example, a purchaser complained that his new iPhone 4 with a represented capacity of 8 GB had only 6.37 GB of storage. An Apple representative conceded that “that is normal” and suggested that, if the user did “not like it,” to “take it back.” See <https://discussions.apple.com/thread/3558683>. A blogger, similarly, reported that a “16 GB” iPad only affords 13 GB of usable storage, and noted that “selling a 16 GB iPad that really only has 13 GB available (after iOS is installed) – is deceptive.” See <http://www.mcelhearn.com/apples-ios-apps-are-bloated-and-how-many-gigs-do-you-get-on-a-16-gb-ios-device/> See also David Price, “What’s an iPhone or iPad’s true storage capacity?” (April 10, 2014), <http://www.macworld.co.uk/feature/ipad/whats-iphone-or-ipads-true-storage-capacity-3511773/> (“a 16GB iPhone 5s offers 12.2GB of true capacity, and a 16GB iPhone 5c allows 12.6GB,” apparently using the binary definition of gigabyte). See also <http://www.imore.com/16gb-vs-64gb-vs-128gb-which-iphone-6-and-iphone-6-plus-storage-size-should-you-get/> (“out of 16 GB of storage you get only 12~13”).

31. Apple’s misrepresentations and omissions are deceptive and misleading because they omit material facts that an average consumer would consider in deciding whether to purchase its products, namely, that when using iOS 8, as much as 3.7 GB of the represented storage capacity on a device represented to have 16 GB of storage capacity is, in fact, not available to the purchaser for storage. For example, Apple misrepresents that an iPhone 6+ with the base level of storage has 16 GB of storage space while concealing, omitting and failing to disclose that, on models with iOS 8 pre-installed, in excess 20% of that space is not available storage space that the purchaser can access and use to store his or her own files.

32. In addition to making material misrepresentations and omissions to prospective purchasers of Devices with iOS 8 pre-installed, Apple also makes misrepresentations and omissions to owners of Devices with predecessor operating systems. These misrepresentations and omissions cause these consumers to “upgrade” their Devices from iOS 7 (or other operating systems) to iOS 8. Apple fails to disclose that upgrading from iOS 7 to iOS 8 will cost a Device user between 600 MB and 1.3 GB of storage space – a result that no consumer could reasonably

1 anticipate. This is confirmed by our own comparison of devices with iOS 7 and iOS 8
 2 installations, and reports by others. *See* “iOS 8, thoroughly reviewed” (September 19, 2014),
 3 available online at <http://arstechnica.com/apple/2014/09/ios-8-thoroughly-reviewed/2/#install>

4 33. Rather ironically, Apple touts iOS 8 as “The biggest iOS release ever.” Of
 5 course, Apple is *not* referring to the literal size of iOS 8, which appears to be entirely
 6 undisclosed in its voluminous marketing materials extolling the purported virtues of iOS 8.

7 34. At present, Apple does not enable users who have upgraded to iOS 8 to revert
 8 back to iOS 7 or another operating system. *See* “How to downgrade from iOS 8 to iOS 7: Apple
 9 stops signing iOS 7.1.2, and blocks iOS downgrades (Sept. 29, 2014), available online at
 10 [http://www.macworld.co.uk/how-to/iosapps/how-downgrade-from-ios-8-ios-7-reinstall-ios-8-](http://www.macworld.co.uk/how-to/iosapps/how-downgrade-from-ios-8-ios-7-reinstall-ios-8-3522302/)
 11 [3522302/](http://www.macworld.co.uk/how-to/iosapps/how-downgrade-from-ios-8-ios-7-reinstall-ios-8-3522302/); “There’s no turning back from iOS 8 if you upgrade from iOS 7.1.2” (Sept. 26,
 12 2014), available online at <http://bgr.com/2014/09/26/downgrade-from-ios-8-to-ios-7-1-2/>).

13 35. The most popular storage option, for each of the Devices, is presently, and has
 14 been at all times, the base level of storage, currently represented to be 8 or 16 GB depending on
 15 the Device. At least a plurality (and perhaps a majority) of purchasers make the determination
 16 that the storage afforded by the base model, which is priced lower than models with higher
 17 storage capacity, will be sufficient for their purposes, based on Apple’s representations as to the
 18 Devices’ storage capacities. The shortfall in actual storage capacity is most acute, and most
 19 material, on the base models, as the unexpected shortfall in storage will cause some purchasers to
 20 exhaust the Devices’ storage capacities, and/or to do so earlier than expected.

21 36. Apple exploits the discrepancy between represented and available capacity for its
 22 own gain by offering to sell, and by selling, cloud storage capacity to purchasers whose internal
 23 storage capacity is at or near exhaustion. In fact, when the internal hard drive approaches “full,”
 24 a pop up ad opens up offering the purchaser the opportunity to purchase “iCloud” cloud storage.
 25 For this service, Apple charges prices ranging from \$0.99 to \$29.99 *per month*. It does not
 26 appear that Apple permits users of its devices to access cloud storage from other vendors, nor do
 27 any of the Devices (unlike certain competitors’ smartphones, including most phones using the
 28 Android operating system) permit the user to insert SD cards or other supplemental, non-Apple,

1 storage units. Apple also does not permit users to freely transfer files between the Devices and a
 2 (notebook or desktop) PC using a “file manager” utility – an option available to most users of
 3 Android or Windows-based portable devices.

4 37. Plaintiff Orshan purchased a 16 GB iPhone 5s on or about February 2014 with (a
 5 version of) iOS 7 pre-installed. On or about October 2014, Plaintiff upgraded the operating
 6 system on his iPhone 5s to iOS 8 in reliance on Apple’s misrepresentations and omissions.

7 38. Plaintiff Endara purchased a 16 GB iPhone on or about December 2014 with
 8 iOS8 pre-installed.

9 39. Plaintiff Henderson purchased a 16 GB iPad on April 1, 2012, and upgraded to
 10 iOS 8 in late 2014, with the catastrophic results described above.

11 40. Plaintiffs hereby bring this class action seeking redress for Defendant's unfair
 12 business practices, false or deceptive or misleading advertising, and violations of the Consumers
 13 Legal Remedies Act ("CLRA").

14 **CLASS ACTION ALLEGATIONS**

15 41. This action may properly be maintained as a class action pursuant to Fed. R. Civ.
 16 P. 23.

17 42. Plaintiffs bring this action as a class action on behalf of themselves and the
 18 following classes (“the Classes”): (1) (a) an “iOS 8 Purchaser Class” consisting of all persons
 19 or entities in the United States who purchased an iPhone, iPod or iPad with represented storage
 20 capacity of 16 GB or less with iOS 8 pre-installed for purposes other than resale or distribution,
 21 and (b) an “iOS 8 Purchaser CLRA Subclass” consisting of all persons in the United States who
 22 purchased an iPhone, iPod or iPad with represented storage capacity of 16 GB or less with iOS 8
 23 pre-installed for personal, family or household use within the four years preceding the filing of
 24 this Complaint, (2)(a) an “Upgrade Class” consisting of all persons or entities in the United
 25 States who upgraded an iPhone, iPod or iPad with represented storage capacity of 16 GB or less
 26 to iOS 8, and (b) an “Upgrade CLRA Subclass” consisting of all persons or entities in the United
 27 States who upgraded an iPhone, iPod or iPad used for personal, family or household use with
 28 represented storage capacity of 16 GB or less to iOS 8,

1 43. Excluded from the Classes are the Defendant, and all officers, directors,
2 employees, or agents of the Defendant.

3 44. The members of the Classes are so numerous that joinder of all members would
4 be impracticable. Plaintiffs do not know the exact size or identities of the proposed Classes,
5 since such information is in the exclusive control of Defendant. Plaintiffs, however, believe that
6 the Classes encompass at least tens of thousands of individuals.

7 45. There are common questions of law or fact, among others, including

- 8 a. The nature, scope and operations of the wrongful practices of Apple;
- 9 b. Whether Defendant's advertising, marketing, product packaging, and other
10 promotional materials were untrue, misleading, or reasonably likely to deceive;
- 11 c. Whether Defendant knew that its representations and/or omissions regarding the
12 Devices' storage capacity were false or misleading, but continued to make them.
- 13 d. Whether Defendant's failure to disclose the amount of storage space consumed by
14 its operating system and other pre-installed software was a material fact;
- 15 e. Whether, by the misconduct as set forth in this Complaint, Apple engaged
16 in unfair or unlawful business practices, pursuant to California Business
17 and Professions Code § 17200, *et seq.*;
- 18 f. Whether Defendant's conduct violated the California Consumer Legal Remedies
19 Act;
- 20 g. Whether Defendant's conduct violated the California Business and Professions
21 Code § 17500, *et seq.*;
- 22 h. Whether, as a result of Apple's misconduct as set forth in this Complaint,
23 Plaintiffs and the Classes are entitled to damages, restitution, equitable
24 relief and other relief, and the amount and nature of such relief; and
- 25 i. Whether Apple has acted on grounds generally applicable to the Class,
26 making injunctive relief appropriate.

27 46. Plaintiffs' claims are typical of the members of the Classes because Plaintiffs and
28 all members of the Classes were injured by the same wrongful practices of Apple as described in

1 this Complaint. Plaintiffs' claims arise from the same practices and course of conduct that gives
2 rise to the claims of the Classes' members, and are based on the same legal theories. Plaintiffs
3 have no interests that are contrary to or in conflict with those of the Classes they seek to
4 represent.

5 47. Plaintiffs will fairly and adequately represent the interests of the members of the
6 Classes. Plaintiffs' interests are the same as, and not in conflict with, the other members of the
7 Classes. Plaintiffs' counsel is experienced in class action and complex litigation.

8 48. Questions of law or fact common to the members of the Classes predominate and
9 a class action is superior to other available methods for the fair and efficient adjudication of this
10 lawsuit, because individual litigation of the claims of all members of the Classes is economically
11 unfeasible and procedurally impracticable. While the aggregate damages sustained by Classes
12 members are likely to be in the millions of dollars, the individual damages incurred by each
13 Class member resulting from Apple' wrongful conduct are, as a general matter, too small to
14 warrant the expense of individual suits. The likelihood of individual members of the Classes
15 prosecuting separate claims is remote and, even if every Class member could afford individual
16 litigation, the court system would be unduly burdened by individual litigation of such cases.
17 Individualized litigation would also present the potential for varying, inconsistent, or
18 contradictory judgments and would magnify the delay and expense to all parties and to the court
19 system resulting from multiple trials of the same factual issues. Plaintiffs know of no difficulty
20 to be encountered in the management of this action that would preclude its maintenance as a
21 class action and certification of the Classes is proper.

22 49. Relief concerning Plaintiffs' rights under the laws herein alleged and with respect
23 to the Classes would be proper on the additional ground that Apple has acted or refused to act on
24 grounds generally applicable to the Classes, thereby making appropriate final injunctive relief or
25 corresponding declaratory relief with regard to members of each Class as a whole.

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27
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COUNT I**California Unfair Competition Law (“UCL”), Cal. Bus. & Prof. Code § 17200, et seq.**

50. Plaintiffs repeat and reallege the allegations set forth above as if fully contained herein.

51. Plaintiffs bring this cause of action individually and on behalf of the Class.

52. Defendant has violated California Business and Professions Code § 17200 by engaging in unfair, unlawful, and fraudulent business acts or practices as described in this Complaint, including but not limited to, disseminating or causing to be disseminated from the State of California, unfair, deceptive, untrue, or misleading advertising as set forth above in this Complaint.

53. Defendant's practices are likely to deceive, and have deceived, members of the public.

54. Defendant knew, or should have known, that its misrepresentations, omissions, failure to disclosure and/or partial disclosures omit material facts and are likely to deceive a reasonable consumer.

55. Defendant continued to make such misrepresentations despite the fact it knew or should have known that its conduct was misleading and deceptive.

56. By engaging in the above-described acts and practices, Defendant committed one or more acts of unfair competition within the meaning of Unfair Competition Law, Cal. Bus. & Prof. Code § 17200, et seq.

57. Plaintiffs and all members of the Classes suffered injury in fact as a result of Defendant's unfair methods of competition. As a proximate result of Defendant's conduct, Plaintiffs and members of the Classes were exposed to these misrepresentations and omissions, purchased a Device(s) in reliance on these misrepresentations, and suffered monetary loss as a result.

58. Plaintiffs, individually and on behalf of the Classes, seek an order of this Court against Defendant awarding restitution, disgorgement, injunctive relief and all other relief allowed under § 17200, et seq., plus interest, attorneys' fees and costs.

COUNT II**California False Advertising Law (“FAL”), Cal. Bus. & Prof. Code § 17500, et seq.**

59. Plaintiffs repeat and reallege the allegations set forth above as if fully contained herein.

60. Plaintiffs bring this cause of action individually and on behalf of the Class.

61. Apple is a California company disseminating advertising from California throughout the United States.

62. Defendant has engaged in a systematic campaign of advertising and marketing the Devices as possessing specific storage capacities. In connection with the sale of the Devices, and the promotion of iOS 8, Defendant disseminated or caused to be disseminated false, misleading, and deceptive advertising regarding storage capacity to the general public through various forms of media, including but not limited to product packaging, product displays, labeling, advertising and marketing. However, Defendant knew or reasonably should have known that the Devices do not make available to users the advertised storage space, and that the failure to disclose the storage space consumed by iOS 8 (both to prospective purchasers of Devices with iOS 8 pre-installed and to prospective upgraders) was a material omission.

63. When Defendant disseminated the advertising described herein, it knew, or by the exercise of reasonable care should have known, that the statements concerning iOS 8 and the storage capacity of its Devices were untrue or misleading, or omitted to state the truth about the Devices' storage capacity, in violation of the False Advertising Law, Cal. Bus. & Prof. Code § 17500, et seq.

64. As a proximate result of Defendant's conduct, Plaintiffs and members of the Class were exposed to these misrepresentations, omissions and partial disclosures, purchased the Devices in reliance on these misrepresentations, omissions and partial disclosures, and suffered monetary loss as a result. They would not have purchased the Devices, or would have paid significantly less for them, and/or would not have upgraded their Devices to iOS 8, had they known the truth regarding the actual storage capacities of the Devices when equipped with iOS 8.

65. Defendant made such misrepresentations despite the fact that it knew or should have known that the statements were false, misleading, and/or deceptive.

66. There were reasonably available alternatives to further Defendant's legitimate business interests, other than the conduct described herein.

67. Pursuant to Business and Professions Code §§ 17203 and 17535, Plaintiffs and the members of the Class seek an order of this Court enjoining Defendant from continuing to engage, use, or employ the above-described practices in advertising the sale of the Devices and promoting iOS 8.

68. Likewise, Plaintiffs seek an order requiring Defendant to make full corrective disclosures to correct its prior misrepresentations, omissions, failures to disclose, and partial disclosures.

69. On information and belief, Defendant has failed and refused, and in the future will fail and refuse, to cease its deceptive advertising practices, and will continue to do those acts unless this Court orders Defendant to cease and desist pursuant to California Business and Professions Code § 17535.

70. Plaintiffs, individually and on behalf of the Class, seek restitution, disgorgement, injunctive relief, and all other relief allowable under § 17500, *et seq.*

COUNT III

California Consumer Legal Remedies Act ("CLRA"), Cal. Civil Code § 1750, *et seq.*

71. Plaintiffs repeat and reallege the allegations set forth above as if fully contained herein.

72. Plaintiffs bring this cause of action individually and on behalf of the Purchaser and Upgrader CLRA Subclasses.

73. The acts and practices described in this Complaint were intended to result in the sale of goods, specifically a cellular phone, in a consumer transaction.

74. The Defendant's acts and practices violated, and continue to violate, the Consumer Legal Remedies Act ("CLRA") in at least the following respects:

1 a. Defendant violated California Civil Code § 1770(a)(5) by representing
2 that Devices and iOS 8 had characteristics, uses, and benefits that they did not
3 have, including representations that they had specific storage capacities when that
4 is not, in fact, the case.

5 b. Defendant violated California Civil Code § 1770(a)(9) by advertising the
6 Devices as having specific storage capacities with the intent not to sell them as
7 advertised.

8 75. Plaintiffs and the Class are entitled to equitable relief on behalf of the members of
9 the Class in the form of an order, pursuant to Civil Code section 1780, subdivisions (a)(2)-(5),
10 prohibiting Defendant from continuing to engage in the above-described violations of the CLRA,
11 to provide restitution or actual damages in the form of all monies paid for storage capacity not
12 realized, the inflated sale price of the Devices, punitive damages, and any other relief the Court
13 deems proper. Plaintiffs further seeks reasonable attorneys' fees under Civil Code section
14 1780(e).

15 76. Pursuant to California Civil Code section 1782, on January 8, 2015, Plaintiffs
16 sent a demand letter to Defendant via registered mail. Defendant refused to respond to the
17 demand letter, making the inclusion of damage claim appropriate under the CLRA.

18 **Prayer for Relief**

19 WHEREFORE, Plaintiffs pray:

20 a. That this matter be certified as a class action with the Class defined as set forth
21 above under pursuant to Fed. R. Civ. P. 23 and that the Plaintiffs be appointed Class
22 Representatives, and their attorneys be appointed Class Counsel.

23 b. That the Court enter an order requiring Defendant to immediately cease the
24 wrongful conduct as set forth above; enjoining Defendant from continuing to conduct business
25 via the unlawful and unfair business acts and practices complained of herein; and ordering
26 Defendant to engage in a corrective notice campaign;

c. That judgment be entered against Defendant for restitution, including disgorgement of profits received by Defendant as a result of said purchases, cost of suit, and attorneys' fees, and injunction; and

d. For such other equitable relief and pre- and post-judgment interest as the Court may deem just and proper.

Jury Demand

Plaintiffs hereby demand a trial by jury.

Dated: April 9, 2015

Respectfully submitted,

/s/ Jonas P. Mann

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